Section 272(a) and (b). Section 272 provides competitive safeguards that Verizon DC must implement to reduce the risks of anticompetitive conduct if. as and when Verizon DC is granted interLATA authority in the District. These safeguards are crucial both to the development of local competition as well as to the continued viability of a competitive long distance market. Noncompliance with Section 272 is both an independent reason to deny the Company in-region long distance authority.[1] as well as a clear indication that long distance approval would not further the public interest. The Affidavit of Scott C. Lundquist, Vice Resident of ETI. addresses certain Section 271(c)(2)(B) checklist compliance issues.

Summary of Testimony and Recommendations

5 In this testimony, I show that despite long-standing legislative and regulatory efforts at both the federal and state levels to facilitate and encourage the development of effective competition in the local telecommunications market. the District's incumbent local exchange carrier Verizon DC. maintains overwhelming dominance of both the residential and business markets The "evidence" presented by Verizon of competitive presence is highly suspect, and

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1. 41 U.S.C. § 271(d)(3)(B). *See Implementation ofthe Accounting Safeguards Under the Telecommunications Acr of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996) (*Accounting Safeguards Order)*, Second Order On Reconsideration, FCC 00-9 (rel. Jan. 18.2000): *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended.* CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking. 11 FCC Rcd 21905 (1996) *(Non-Accounting Safeguards Order)*, petition for review pending sub nom. SBC Communications v. FCC, No. 97-1118 (filed D.C. Cir. Mar. 6, 1997) (held in abeyance May 7.1997). First Order on Reconsideration. 12 FCC Rcd 2297 (1997) *(First Order on Reconsideration)*, Second Order on Reconsideration. 12 FCC Rcd 8653 (1997) *(Second Order on Reconsideration), aff'd sub nom. Bell Atlantic Telephone Companies v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997). Third Order on Reconsideration. FCC 99-242 (rel. Oct. 4. 1999) *(Third Order on Reconsideration).*

even where competitive local service choices me available to the District's consumers. there can be no assurance that such competition as does exist at the present time is economically viable or sustainable. The competitive market conditions fall short of the DoJ requirement that the market be *irreversibly* open to competition.

6. Section 272 provides a number of critically important competitive safeguards that are intended to provide specific protections during the initial transition period in which Verizon will be offering in-region long distance services while still retaining extensive and pervasive market power with respect to local services. By virtue of the local market power Verizon DC maintains, it is able to engage in cross-subsidization of its long distance offerings. In each of the states in which Verizon has attained in-region entry and ***notwithstanding the specific statutory requirement that its in-region long distance services be provided by an affiliate structurally separated from the BOC***, Verizon has nevertheless structured its local and long distance operations in an effectively integrated basis. Although Section 272 requires structural separation of the BOC and its Section 272 affiliate for the first three years following interLATA authority (unless further extended by the FCC). Verizon consistently operates in a manner that simulates full integration. Transactions between the affiliates are structured to shift the majority of costs to the BOC and their ratepayers. in direct violation of the FCC's accounting rules. Unless Verizon DC agrees to comply in a meaningful way with Section 272. this Commission should find that the requested authorization poses serious risks to the public interest and therefore should be denied.

7. As I shall discuss in detail below. Verizon DC's entry will be detrimental to the public interest by diminishing competition for both long distance and local telecommunications services

in the District. If permitted to offer long distance services, Verizon DC will use its preexisting relationships with the vast majority of the residential customers in its service territory to preemptively "sell" Verizon long distance m i c e during inbound customer contacts initiated by customers for purposes entirely unrelated to obtaining long distance service. Verizon DC's near-monopoly control of the local market will enable it to leverage and extend that monopoly into the adjacent and currently competitive long distance market, ultimately remonopolizing the long distance market as well. Actual long distance market share data reponed by Verizon and other BOCs for states in .which Section 271 authority has been granted corroborate this conclusion.

8. Once Verizon DC's quest for interLATA entry in the District of Columbia has been realized. the Company's incentive to comply on an ongoing basis with the "competitive checklist" will rapidly dissipate, threatening the sustainability of the small amount of competition that has developed thus far. And. as long as Verizon DC continues to control the overwhelming share of the local exchange service market, its ability to engage in "joint marketing" of local and long distance service — particularly in the residential segment — will enable Verizon to rapidly remonopolize the long distance market in the District, resulting in higher prices in the future for what is today a highly competitive service. The absence of successful competitive entry and penetration in the District's local service market, the potential for Verizon DC "backsliding" once its long distance business has been established, and the serious risk that Verizon will come to monopolize the District's long distance market as well, all portend a serious and permanent diminution of competition.

9. Given these substantial harms to the District's local and long distance markets. Verizon's public relations attempts to portray its in-region entry as furthering the public interest should be dismissed by this Commission. In the press release issued by Verizon announcing the filing of its Section 271 application with the Commission, Verizon made reference to. but failed to specifically identify, certain purportedly "independent economists" and "consumer watchdog groups" that have supposedly "calculated" the "savings" that consumers have supposedly realized as a result of Verizon DC's entry into interLATA *markets* in several other jurisdictions.[2] Significantly. nowhere in Verizon DC's sworn prefiled testimony in this proceeding has the Company either identified these sources or even cited or made reference to their supposed findings. However, Verizon has provided testimony with respect to these claims in some of its other Section 271 applications. Appendix 1 to this affidavit contains a substantive review of the independence of these "studies." and shows that they do not stand up to any serious analytical scrutiny

10. In light of these facts. I recommend that this Commission. as pan of its public interest finding and in order to protect the District's ratepayers, find that Verizon DC retains significant market power in the local market. The Commission should acknowledge that as long as Verizon DC retains that market power, Verizon has significant ability and incentive to engage in anti-

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2. "Verizon Asks PSC to Suppon Company's Request To Offer Long Distance in Nation's Capital". Verizon New Release, July 12.2002. available at http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=77374&PROACTIVE_ID=cecfc8cac9c9c6c9cec5cecfcfcfc5cecfc6cacbcbc7c9c7ccc5cf, accessed 9/13/02. A copy of this news release appears in Attachment OPC A-2.

competitive behavior. To forestall this anticompetitive behavior. this Commission should take the following steps:

- The Commission should prohibit improper self-dealing by requiring that Verizon DC file with the Commission and make available for public inspection all fair market value studies undertaken, including a study estimating the fair **market** value of joint marketing and customer acquisition services, and the complete process **and** data used to detennine the fully distributed cost for services priced under either of thew two methods. If Verizon fails to make such a filing, it should not be permitted to provide the service in question. In addition, the Commission should direct the auditor, during the joint federal-state biennial Section 272 audit proceeding, to examine all of these filings, not just a random sample.

- The Commission should apply non-solicitation rules to the transferring or movement of employees from Verizon DC to Verizon Long Distance. While employed at Verizon, no employee of any Verizon entity should request or solicit an employee of Verizon DC. or cause another employee of Verizon DC to be solicited, to transfer or move employment from Verizon DC to Verizon Long Distance. Verizon should not post advertisements for or notices of availability of Verizon Long Distance positions in Verizon DC offices or on Verizon electronic medium, nor should it allow Verizon Long Distance to post in Verizon offices or on Verizon intranets or other electronic media.

- The Commission should find that. as long as Verizon DC has market power in the local market. it is able to artificially inflate the "Prevailing Market Price" of billing and collection services offered to competing IXCs. 'The Commission should require that Verizon DC price billing and collection services provided to Verizon Long Distance at the lesser of fully distributed cost or fair market value, and made available to competitors at the same price.

- The Commission should strengthen the affiliate transaction rules by directing the affiliates to operate such that the management of each entity (Verizon DC and Veriron Long Distance) make all affiliate transaction, service offering. and pricing decision only with respect to the bottom line of each respective entity.

- The Commission should restrict Verizon's use of the inbound channel for joint marketing of local and long distance.

- The Commission should restrict Verizon's use of shared employees to sign customers up for discount long distance calling plans.

- The Commission should prohibit Veriron DC from disconnecting a customer's local telephone service in the event that the customer fails to pay Verizon long distance charges billed by Verizon DC. *wherher or nor the Verizon long distance service is provided by rhe Verizon Long Distance affiliate or by Verizon DC on an integrated basis*

THE PUBLIC INTEREST STANDARD

The Public Interest requirement of the *Act* should be interpreted broadly to include the impact on competition in both the District's local and *long* distance markets from a variety of sources, including violations of the spirit and express requirements of the *Act*.

11. Verizon DC, as an incumbent local exchange carrier, is obligated *to* comply fully with Sections 251 and 252 of the ***Act***. The Section **271(c)(2)(B)** "competitive checklist" essentially reiterates and refers to the Section 251/252 duties applicable to all ILECs, but in the case of Bell Operating Companies, Section 271 presents the ***additional*** compliance incentive in the form of the promise of in-region long distance entry.[3] As Table 1 below demonstrates, ***each and all of the Section 271(c)(2)(B) "competitive checklist" requirements for in-region long distance entry are also imposed upon all ILECs. including Verizon DC, independently and irrespective of the matter of in-region long distance entry.*** Verizon DC is and ***has since 1996*** **been** ***required*** to satisfy each and all of the 14 "checklist" items. Section **271(c)(2)(B)** is. in that context. ***entirely redundant*** at least insofar as specifying the things that BOCs (as ILECs) are required to do to accommodate CLEC entry; its sole purpose is to offer the BOCs a "carrot" to encourage them *to* comply with a set of legal requirements compliance with which is mandatory in any event. Once Verizon DC obtains Section 271 authority in the District, that "carrot" is no longer there, and as such there is no more assurance of ***continued*** compliance with the 14 checklist requirements than there would have been had the Section 271 incentive not been offered.

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3. 47 U.S.C. § 271(b)(1).

Table 1

BOC Compliance with all of the Sec. 271(c)(2)(B) "checklist" items is Mandatory Even if *the* BOC Does Not Seek In-Region InterLATA Authority

Checklist	Compliance requirement	Also Found At
1	Interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).	251(c)(2); 252(d)(1)
2	Nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).	251(c)(3); 252(d)(1)
3	Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of section 224	251(b); 224
4	Local loop transmission from the central office to *the* customer's premises, unbundled from local switching or other services.	251(c)(3)
5	Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services	251(c)(3)
6	Local switching unbundled from transport, local loop transmission, or other services.	251(c)(3)
7	Nondiscriminatory access to ((i) 911 and E911 services; (ii) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and (iii) operator call completion services.	251(b)(3); 251(c)(3)
8	White pages directory listings for customers of the other carrier's telephone exchange service	251(b)(3)
9	Compliance with guidelines, plan or rules established by numbering plan administrator.	251(e)
10	Nondiscriminatory access to databases and associated signaling necessary for call routing and completion.	251(a); 251(c)(3); 251(c)(5)
11	Compliance with FCC regulations regarding number portability.	251(b)(2)
12	Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in ac[illegible] with the requirements of [illegible] 251(b)(3).	251(b)(3)
13	Reciprocal [illegible] in [illegible] requirements of section 252(d)(2)	252(d)(2)
14	Telecommunications services are available for resale in [illegible] with the requirements of sections 251(c)(4) and 252(d)(3)	251(c)(4) and 252(d)(3)

12. The Commission should consider the full extent of Verizon's compliance with Sections 251/252 in general and with the Section 271(c)(2)(B) checklist items in particular, both as such Compliance presently exists and as it is likely to be maintained on an ongoing basis into the

future. In the *Non-Accounting Safeguards Order*, the FCC clearly recognized the capacity of a BOC to backslide on checklist compliance after it receives Section 271 authority:

> Moreover. we need to ensure that the *market opening* initiatives of the BOCs continue after their entry into the long distance market. It is not enough that the BOC prove it is in compliance at the time of filing a section 271 application; ***it is essential that the BOC must also demonstrate that it can be relied upon io remain in compliance.*** This may be demonstrated in various ways. For example, we must be confident that the procedures and processes requiring BOC cooperation, such as interconnection and the provision of unbundled network elements, have been sufficiently available, tested, and monitored. Additionally, we will look to see if there are appropriate mechanisms, such as reporting requirements or performance standards. to measure compliance, or to detect noncompliance, by the BOCs with their obligations. Finally, the BOC may propose to comply continually with certain conditions, or we may, on a case-by-case basis, impose conditions on a BOC's entry to ensure continuing compliance. The section 271 approval process necessarily involves viewing a snapshot of an evolving process. ***We must be confident that the picture we see as of the date of filing contains all the necessary elements to sustain growing competitive enny into the future.***[4]

Therefore. as pan of its determination as to Verizon's compliance with the requirements of the I996 *Act.* the Commission needs to consider evidence that the snapshot view of the checklist items contains everything necessary to assure Verizon's *continued* compliance. Such a consideration must not be limited to a cursory review of Verizon's current standing with respect to the Section 271(c) checklist items, but must also include the plans of Verizon and its affiliates' provision of services to CLECs, to CLEC customers, possibilities of remonopolization of the long distance market, and a level playing field for all competitive providers.

4. ***Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934. as amended. To Provide In-Region, InterLATA Services In Michigan.*** CC Docket No. 97-137. ***Memorandum Opinion and Order,*** 12 FCC Rcd 20543,20555 (1997) (***"Ameritech Michigan Order")*** (emphasis added).

13. The FCC has also recognized the significant potential for a BOC. after receiving Section 271 authority, to engage in significant anticompetitive conduct. harming the interLATA market:

> A BOC may have an incentive to discriminate in providing exchange access services and facilities that its affiliate's rivals need to compete in the interLATA telecommunications and information services markets. For example a BOC may have an incentive to degrade services and facilities furnished to its affiliate's rivals, in order to deprive those rivals of efficiencies that its affiliate enjoys. Moreover, to the extent carriers offer both local and interLATA services as a bundled offering, a BOC that discriminates against the rivals of its affiliates could entrench its position in local markets by making these rivals' offerings less attractive.[5]

Congress and the FCC promulgated the requirements of performance monitoring plans, as well as the competitive safeguards of section 272 in an attempt to counteract this incentive. Ultimately. however. while the presence of effective, widespread competition in the local exchange service market would not necessarily eliminate these incentives, these safeguards would assuredly undermine a **BOC's** ability to engage in the kind of anticompetitive and discriminaton conduct that the FCC describes.

14. At its core. however. the "competitive checklist" appearing in Section 271(c)(2)(B) is more than merely a ''carrot" designed to incent the BOCs to comply with the more general market-opening requirements of Sections 251 and 252. Rather, the arrival of effective competition lies at the core of the national telecommunications policy that is embraced in the 1996 *Act*. The public interest requirement stems from the interLATA "line of business restriction" imposed

5. *Non-Accounting Safeguards Order.* 11 FCC Rcd 21905.

by the Modification *of Final Judgment* **("MFJ")**, the **1982** Consent Decree entered into by the former Bell System and the US Department of Justice in settlement of the **1974** antitrust case? The MFJ prohibited the divested BOCs from offering interLATA long distance services. This *structural remedy* was adopted in order to prevent the BOC local service monopolies from using their monopoly market power in the local services market to block competition in the adjacent long distance market. Section **271** was adopted as a *replacement* for the MFJ long distance line of business restriction, and established a process by which BOCs could enter the "in-region" long distance market provided that they implemented a series of specific measures that would have the effect of irreversibly opening their previously monopolized local telecommunications markets to competitive entry. To the extent that the local market itself becomes competitive, the BOCs' ability to exert market power in the adjacent long distance market would be attenuated. Conversely. however, to the extent that competitionfails *to develop* in the local services market. the BOC will then have both the incentive and the ability *to* exert market power in. and ultimately to remonopolize. the adjacent long distance market.

15. Competition in the long distance market has thrived — and as a result prices have sharply decreased — in the nearly two decades since the MFJ first went into effect in January, 1984. The principle generally underlying Section **271** is that once there is sufficient competition in the local service market. it will then no longer be possible for a BOC to extend its local monopoly into the adjacent long distance market. The existence of but a single facilities-based

6. *United States* v. Wesrern Electric Company, *Inc., et al,* Civil Action **No. 74-1698** (D.D.C.). 552 F. Supp. 131 **(D. D.C. .1982)**, *aff'd sub nom. Maryland vs.* ***U.S.***, **460 U.S. 1007** (1983): and *Modification of Final Judgment*, sec. VIII.B.

competitor somewhere in any **state** — one of the threshold conditions that a BOC **must satisfy** to obtain Section 271 approval[7] — is clearly not by itself sufficient to constrain the incumbent BOC's exercise of market power. And indeed, if a BOC is authorized to *offer* in-region interLATA services while still maintaining **an** effective monopoly in the local market despite the presence of **a** few localized competitors. "**the** requested authorization" would clearly *not* **be** "consistent with the public interest, convenience. and necessity" **as** required by Section 271(d)(3)(C).[8]

16. The California Public Utility Commission's ("CPUC's") final decision released September 19,2002 in the current Pacific Bell Section **271** consultative proceeding reiterates the concern expressed above. In the decision, the CPUC, while on the one hand finding that Pacific Bell had satisfied 12 out of the **14** checklist items, nevertheless observed that:

> Local telephone competition in California exists in the technical and quantitative data: but it has yet to find its way into the residences of the majority of California's ratepayers. Only time and regulatory vigilance will determine if it ever arrives. We expect that the public interest will be positively served in California by the addition of another experienced. formidable competitor in **the** intrastate interexchange market. At the same time. we foresee the harm to the public interest if actual competition in California maintains its current anemic pace, and Pacific gains intrastate long distance dominance to match its local influence?

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7. 47 U.S.C §271(c)(1)(A)

8. 47 U.S.C. §271(d)(3)(C).

9. California PUC R.93-04-003 *et seq.*, D.02-09-050, ***Decision Granting Pacific Bell Telephone Company's Renewed Motion for an Order that it has Substantially Satisfied the Requirements of the 14-point Checklist in $271 of the TelecommunicationsAN of 1996 and*** **(continued...)**

Raw data purporting to quantify the extent of CLEC market penetration that has been offered by BOCs in various Section 271 proceedings is. at a minimum, highly controversial (as I will discuss below) and, consistent with the California ALJ's finding, docs not establish that competition exists "on the ground" at a level that offers consumers a realistic alternative to the BOC's services or that works to limit or constrain the BOC's market power.

Verizon fails to present credible evidence of the extent of local competition in the District.

17. As I have previously explained, the notion underlying Section 271 of the 1996 Act is that once the local exchange market becomes competitive such that consumers have a real choice with respect to local service provider, no one local service provider will possess a monopoly in this segment and thus be capable of leveraging that monopoly to similarly monopolize and dominate the adjacent long distance market. Consequently, through the Declaration of Ms. Mane Johns. Verizon DC undertakes to demonstrate the presence of significant competition in the District's local service market. Ms. Johns claims that Verizon DC is currently operating in a market where CLECs are positioned to serve most if not all existing customers.[10] Were that the case. Verizon DC could presumably claim that the local service market in the District is irreversibly opened to competition. The validity of Ms. Johns' methods for determining levels of competition and CLEC competitive potential is therefore critical to this proceeding. As I shall demonstrate. however, the various claims and assertions advanced by Ms. Johns serve only to

9. (...continued)
Denying that it has Satisfied § 709.2 of the Public Utilities Code. released September 19,2002 (*"Calif. PUC Decision"),* at *263-264.*

10. Johns Declaration, at paras. 5-7.

confirm Verizon DC's cumnt. ongoing and overwhelming dominance of the District's local service market. In this regard, her testimony fails to make a showing regarding the presence of sustainable (*i.e.*, irreversible) local competition. Verizon DC has offered no evidence of the actual number of access lines currently being furnished by facilities-based CLECs and has resorted to various types of "shadow" evidence that the Company undertakes to "interpret" as conveying far more market intelligence than it actually does.

Measuring CLEC penetration in DC by extracting certain information from E911 databases inaccurately overstates and inflates the numbers.

18 One example of such "shadow" evidence is Verizon DC's use of the quantity of CLEC listings in the E911 database (which the Company is responsible for managing)" as a proxy for

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11. According to Verizon DC's responses to OPC 1-17 and 1-18, Verizon DC personnel administer the E911 DataBase Management Center and view the database through a secure interface. Verizon DC maintains the unique ability to access data on competitors of the type included in Ms. Johns' affidavit. In this regard. Verizon DC's use of the carrier E911 database to extract market information is in itself evidence of an abuse of its monopoly position. Apparently. Verizon DC is able to obtain extremely granular market data about its competitors' activities from this data source that it exclusively controls. By mining the E911 database and assuming that it is sufficiently accurate for the conclusions being drawn by Ms. Johns to be valid. Verizon DC apparently can identify the quantity of access lines being provided by each of its CLEC competitors in each exchange area — the type of information that Verizon DC clearly considers proprietary given it is viewed via a "secure interface." While this infomation is not being furnished to Verizon DC's competitors. Verizon DC is apparently making liberal use of the ven same proprietary market data for its own competitive and strategic purposes. such as its use in this proceeding to buttress is efforts to obtain Section 271 authority. Inasmuch as Verizon DC does not make this information available to its competitors while at the same time utilizing it for its own purposes, the practice is on its face competitively unfair, and likely violates the express prohibition, set out at Section 222(b) of the federal *Act*, that "[a] telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and

(continued...)

lines served by CLECs. as discussed by Ms. Johns in her declaration. Verizon DC has extracted certain information from this database and has integrated those results with other “shadow.‘ data to which Verizon DC has access, such as the number, location, and camer for interconnection trunks and collocation arrangements. Upon closer examination, however. it becomes apparent that each of Ms. Johns‘ methods involve assumptions or distortions that seriously inflate this important competitive indicator.

19. Ms. Johns initially portrays the count of CLEC-served access lines, which relics in large part upon data from the E911 database, as “a conservative estimate.”[12] She claims that “in counting each E911 listing as a single line, Verizon DC is no doubt underestimating the actual amount of CLEC competition, since a single E911 CLEC listing could well represent many additional CLEC lines, particularly for a business customer.”[13] Yet, Verizon DC has made no anempt to determine the actual occurrence of any theory that would justify characterizing this estimate as an “understatement.“ Verizon DC advises that for CLEC customers, “the E911 database is fed through the secure PS/ALI electronic interface.”[14] Verizon DC indicates that the

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11. (...continued)
shall not use such information for its own marketing efforts.” Although the FCC has promulgated rules pertaining to ILEC use of Sec. 222(c) *Customer* Proprietary Network Information. I am not aware of any ruling that would affirmatively permit the use of Sec. 222(b) carrier proprietary data for the purpose for which it is being used here by Verizon.

12. Johns Declaration, at para. 6.

13. Johns Declaration, at para. 6.

14. Verizon DC response to OPC 1-18. “PS/ALI” stands for Private Switched/Automatic Location Identification. See Checklist Declaration on Behalf of Verizon Washington DC, Inc. (“Checklist Declaration”), at para. 239.

guidelines for populating E911 data through the PS/ALI interface are contained in the “Regional E911 Electronic Interface Guide.”[15] Although the Company contends that the PS/ALI interface **uses an “industry-standard *format*,”**[16] that clearly pertains to the mechanism for entering the data. not determining which data to enter in the first place. There is ample reason to believe that CLECs do not all conform to one set of practices with respect to what kind of information should be entered into the E911 database, and thus the number of apparent facilities-based lines in the E911 database is not likely to be “underestimated” at all.

20. Verizon DC‘s assessment of the count of facilities-based lines based upon information obtained from E911 databases is likely in error due to commonly-used business communications arrangements such as direct inward dialing (“DID), where each station line “behind a PBX is assigned its own unique 7-digit telephone number. A DID customer will typically obtain a block of numbers from its local carrier (ILEC or CLEC), and that quantity of individual numbers will typically be a multiple of the quantity of physical access lines (PBX trunks) that are being provided to that customer. For example, FCC rules relating to surcharges for Local Number Portability (“LNP”) allow an ILEC to apply nine *(9)* LNP charges for each PBX trunk or equivalent: thus. in the case of a T-1 trunk containing 24 individual voice channels. the FCC LNP rules contemplate 24 x 9, or 216 PBX stations “behind” the single T-l facility.”[17] There has been no evidence provided by Verizon to indicate that individual carrier practices regarding the

15. Verizon DC response to OPC 1- 18.

16. Checklist Declaration, at para. 239 (emphasis supplied).

17. 47 CFR 52.33(a)(1)(i)(A).

manner in which DID numbers are entered into the E911 database are uniform. Indeed, AT&T has indicated that its policy is "to report to the E911 database *every* telephone number behind a PBX switch, including Direct Inward Dial numbers."[18]

21. More importantly, while Ms. Johns ultimately contends that the E911 database is a listing of telephone numbers from which outgoing calls *can* be made, Verizon DC's own E911 database entries exceed its access line count by BEGIN PROPRIETARY << >> END PROPRIETARY[19] Since CLECs serve proportionately fewer residential and small business lines than does Verizon DC, any excess of E911 number listings to actual voice-grade lines is likely far greater in the case of CLECs than it would be for Verizon DC. In any event, Verizon DC's own data provides BEGIN PROPRIETARY << >> END PROPRIETARY that the quantity of CLEC-associated numbers in the E911 database is likely BEGIN PROPRIETARY << >> END PROPRIETARY than the actual

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18. *Investigation by the Department on its own motion into the appropriate regulatory plan to succeed price cap regulation for Verizon New England, Inc., d/b/a Verizon Massachusetts' retail intrastate telecommunications services in the Commonwealth of Massachusetts*, Before the Massachusetts Department of Public Utilities, DTE 01-31, Supplemental Surrebuttal Testimony of Deborah S. Waldbaum, November 13, 2001, at 4.

19. This percentage is calculated by taking Verizon DC's count of E911 listings of BEGIN PROPRIETARY << >> END PROPRIETARY and subtracting Verizon DC's count of 15,700 resold lines and 2,500 UNE-P listings, which provides the number of E911 listings attributable solely to Verizon DC. From that number I subtracted Verizon DC's reported 980,000 business and residence access lines, which provides the quantity of E911 listings BEGIN PROPRIETARY << >> END PROPRIETARY Verizon DC's own access line count. I then divided that number by Verizon DC's 980,000-million access lines. *See* Johns Declaration, at para. 6, and Verizon DC response to OPC 1-15.

Information alleged to be Proprietary by Verizon DC had been redacted from this page.

number of CLEC access lines in service.[20] inasmuch as many of the CLEC E911 listings that Ms. Johns interprets as CLEC *access lines*[21] include direct inward dial (DID) numbers. the CLEC market share figures that she proffers would be seriously exaggerated. Moreover, a CLEC will typically include its own customers in the E911 database where the CLEC provides the *switch*.[22] even if Verizon DC is the underlying provider of the access line facility connecting the customer's premises with the CLEC switch.[23] Hence, when combined with the lack of correspondence between E911 listings and CLEC customer access lines, the E911 database count is not a reliable indicator of the amount of CLEC-provided facilities in the District's market.

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20 Pending FCC rules would require PBXs to have the ability to identify the specific PBX extension number placing each call for E911 purposes at least with respect to a limited number of PBX station lines This capability is referred to as identified outward dialing (IOD). *In the Matter of Revision of the Board's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket 94-102, 9 FCC Rcd 6181, at para. 60.

21. Johns Declaration, at para. 6.

22. Checklist Declaration, at para. 239

23. See. *Investigation by the Department on Its Own Motion into the Appropriate Regulatory Plan to Succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts' Retail Intrastate Telecommunications Services in the Commonwealth of Massachusetts*, Before the Massachusetts DTE Docket No. 01-31, Verizon Response to ATT-VZ 2-1, October 3, 2001.

Measuring CLEC penetration in DC by counting the number of completed collocation arrangements misrepresents the actual number of CLECs providing telecommunications services in the District.

22. The use of completed collocation arrangements as an indicator of CLEC competitive potential in the District is another "shadow" approach being relied upon by Verizon DC. The Company flaunts the number of completed collocation arrangements as an indicator of both the existence of and potential for facilities-based competition. Verizon DC points to "approximately 150 existing in-service collocations arrangements" in Verizon DC central offices as evidence that a significant number of CLECs are positioned to directly compete with Verizon." The strength of potential competition as demonstrated by collocation arrangements is mitigated significantly when the number of failing CLECs is considered. Indeed, of the 109 traditional physical collocation arrangements in existence in April 2002, only 70 were still in use in July 2002[25] — which represents a 36% decline in only three months. "In use" virtual collocation arrangements numbered 9 in April 2002, yet that quantity dropped to 7 by July.[26] CATT arrangements also declined from 14 in April 2002 *to* 12 in July. Given the continued turmoil in the industry since April, it is reasonable to expect even fewer "in use" collocation arrangements for CLECs now and in the foreseeable future. especially considering the bankruptcy filings of Adelphia. XO Communications, ATG and WorldCom over the past four months."

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24. Johns Declaration, at para. 5.

25. Verizon DC response to OPC 1-42.

26. Verizon DC responses to OPC 1-41, 1-43.

27. "Adelphia Succumbs To Bankruptcy", TR Daily. June 26,2002; "XO Files For Bankruptcy. Pledges Reorg With Or Without Forstmann/Telmex", *TR Daily*, June 17,2002;

(continued...)

23. Moreover, **some of the** collocation arrangements being cited by Verizon DC ***are*** undoubtedly associated with "data CLECs," ***i.e.,*** carriers providing Digital Subscriber Line (DSL) services and ***not*** voice dial-tone services. Verizon DC **has** itself demonstrated that carriers providing DSL service **as** separate entities from Verizon DC require collocation arrangements. In response to OPC **1-49,** Verizon DC indicated that prior to the December 3**1,2002** reintegration of Verizon Advanced Data Inc. ("VADI") into the **core** Verizon company. VADI had BEGIN PROPRIETARY << >> **END** PROPRIETARY virtual collocation arrangements in that same number of DC central **offices.**[28] This information clearly demonstrates that data CLECs account for **some** portion of the 150 collocation arrangements Verizon attributes generally to CLECs.

24. Furthermore. **as** has been demonstrated with respect to CLEC entry into the local voice telephone service market, entry into other service areas such **as** DSL is also proving to be difficult and expensive. due **to** high fixed costs associated with acquiring **the** necessary facilities. A compelling demonstration of the prevailing dearth of confidence in the data regarding CLECs' ability to successfully develop their networks and even to expand into voice-over-IP **("VOIP")** service can be seen in the November 2000 decision by Verizon to pull **out** of its plans to acquire

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27. (...continued)
"Integra Telecom to Buy assets of Advanced Telecom Group", ***The*** *Business Journal Portland*, May 31. **2002.** <u>http://portland.bizjournals.com/portland/stories/2002/05/27/daily37.html</u>, accessed **9/24/02:** "Bankruptcy at WorldCom Is the Largest in **U.S.** History", *The New York Times*. **July 22.2002,** <u>http://www.nytimes.com/2002/07/22/business/22worl.html?todays headlines</u>. accessed **9/24/02.**

28. The count of VADI collocation arrangements are not included in Verizon's count of **150** collocation arrangements attributed to CLECs. Johns Declaration, Attachment 101, at 3.

Information alleged to be Proprietary by Verizon DC has been redacted from this page.

a *55%* stake in NorthPoint Communications. Following this decision, a Verizon spokesperson claimed that the Company had “several other ways” of gaining customers in the DSL markets outside of Verizon’s traditional territory.[29] In March 2001, AT&T acquired the *physical assets* of Northpoint for about $135-million, less than 10% of the pre-Verizon-merger market value of Northpoint as a going concern, and only about “‘25 cents on the dollar’ ... for NorthPoint’s ‘hard assets.’”[30] Rhythms NetConnections, another national DSL player. has already disappeared from the competitive landscape, and Covad previously sought and recently emerged from Chapter 11 restructuring.” .

25. An article in the ***New York*** Times, dated June 18,2001, analyzing the fiber optic long-haul “backbone“ market, underscores the utter lack of competition at the *local* distribution end of the information superhighway:

> There is a glut of capacity of high-speed. long-haul information pipelines, but a shortage of the high-speed local-access connections that consumers and businesses need to connect to the Web. It is as if superhighways stand nearly empty while traffic backs up at the Holland and Lincoln tunnels.

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29 ”Citing Declining Operations. Financial Results. Verizon Backs Away From Takeover Of NorthPoint,” *TR Daily,* November 29,2000.

30. “AT&T Gets Bargain Price For NorthPoint’s DSL Assets,” *Telecommunications Reports*. March 26,2001 : “Veriton, NorthPoint to Merge DSL Operations,” *TR’s Last-Mile Telecom Report*, August *8.2000.*

31. “Rhythms NetConnections Files Bankruptcy, Seeks ‘Going Concern’ Bids,” *TR Daily*, August 2.2001 : “Covad Files For Bankruptcy In Accordance With Refinancing Plan,” *TR Daily,* August 15, 2001.

> Few people have fast Internet connections, and prices are rising for those who do...[32]

Ironically, while the demand for bandwidth may well be present and growing,[33] the ILEC-controlled local access monopoly is working effectively to block that demand from ever reaching the overabundant supply. Given the tens of billions of dollars that have been invested in backbone fiber, one would certainly expect that, were realistic competitive opportunities actually available in the local service market, at least some of that investment capital would have been and would even today be deployed in this direction. The fact that the local ILEC bottleneck persists, and that investors are running away from pursuing local service entry as fast as they can, speaks volumes about the actual state of local competition.[34]

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32. "Shining Future of Fiber Optics Loses Glimmer," *The New York Times*, June 18, 2001, p. A1.

33. While demand for broadband services is certainly present, current assessments of the penerration rate of "broadband" services hover only in the range of 10%. In *the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC* Docket No. 98-146, *Third Report*, rel. February 6, 2002, at para. 119.

34. One might even go so far as to theorize an affirmative business strategy on the part of SBC, Verizon and the other RBOCs to deliberately withhold the availability of high-speed Internet access so as to enfeeble the backbone fiber optic network providers to the point whm, following their attainment of Section 271 authority, the RBOCs will be in a position to purchase those backbone network assets at fire-sale prices.

Opportunities for CLEC expansion or growth have virtually disappeared, a situation recognized by RBOCs and CLECs alike.

26. One need look no further than the recent actions of SBC and Verizon for confirmation of the extreme difficulties that entrants confront in competing with ILECs in the local services market. SBC. in its Joint Application for approval of its merger with Ameritech,[35] and Verizon. in its Joint Application for approval of its merger with GTE,[36] each represented that following their respective mergers the two mega-ILECs would each commit to pursuing "out-of-region" entry in various local exchange service markets. SBC had identified thirty such markets (of which 17 were in what would become Verizon territory),[37] while BA/GTE (now Verizon) committed to enter twenty-one markets.[38] Although various parties and their experts, including myself. were highly skeptical as to the legitimacy of these so-called "commitments," both sets of joint applicants insisted that their respective "national local strategies" would be aggressively

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35. *In re: Applicarions of Amerirech Corp.. Transferor. and SBC Communicafions Inc., Transferee, for Consenr to Transfer Control of Corporations Holding Board Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communicarions Act and Parts 5, 22. 24, 25. 63, 90, 95. and 101 of the Board's Rules.* Before the Federal Communications Commission, CC Docket No. 98-141. *Applicarion.* Filed July *27,* **1998** (*"SBC/Ameritech Merger Application"),* at **Sec.** II.A.1.

36. *Applications of GTE Corporation and Bell Atlantic Corporation. Description of the Transaction. Public Interest Showing and Related Demonstrations*, Before the Federal Communications Commission. CC Docket No. **98-184,** *Application.* Declaration of **Jeffrey** C. Kissell. Filed October 2. **1998**, *("Bell Atlantic/GTE Merger Applicatian"),* at para. **14.**

37. *SBC/Ameritech Merger Application.* Attachment A: "New Markets for the New SBC"

38. Bell *Atlantic/GTE Merger Applicarion,* at para. **14.**

pursued and would result in a significant enhancement of facilities-based local competition throughout the country.[39]

27 In its Orders approving the two mergers, the FCC undertook to put some teeth into what were in other respects **"soft"** commitments on the **part** of the two *sets* of merger parties with respect to their out-of-region local entry plans. In its ***SBC/Ameritech Order.*** the Commission ***required*** SBC to undertake the promised out-of-region local entry, and indicated that the **post-**merger SBC would be fined **as** much **as** S39.6-million for **each** of the 30 out-of-region mark& that it did not enter.[40] In the ***BA/GTE Order,*** the FCC similarly imposed the threat of fines if BA/GTE failed to invest at least **$500-million** in out-of-region CLEC activities. or provide service as a CLEC to at least **250,000** customer lines, by the end of 36 months following the merger closing **date.**[41] As it has turned out, of course, the skepticism of **various** commentators

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39 Id. at para 15; *SBC/Ameritech Application*, Affidavit of James **S.** Kahan, at para. **27.**

40. ***In re. Applications of Ameritech Corp.. Transferor, and SBC Communications, Inc., Transferee. for Consenr to Transfer Control of Corporations Holding Board Licenses and Lines Pursuanr io Sections 214 and 310(d) of the CommunicafionsAct and Parts 5. 22, 24. 25, 63, 90, 95, and 101 of the Board's Rules,*** CC Docket No. 98-141, ***Memorandum Opinion and Order,*** October ***6.*** 1999. at Appendix C, para. 59(d). The FCC ordered:

> If an SBC/Ameritech Out-of-Territory Entity fails to satisfy any of the 36 separate requirements for each out-of-territory market on or before the deadlines set forth in Subparagraph c, SBC/Ameritech shall make a one-time contribution of $1.1 million for each missed requirement (up to a total contribution of $39.6 million per market and $1.188 billion if SBC/Ameritech Out-of-Territory Entities fail to satisfy all 36 requirements in all 30 markets) to a fund to provide telecommunications services **to** underserved areas, groups, or persons.

41. ***Applications of GTE Corporation and Bell Atlantic Corporation. Description of the Transaction. Public Interest Showing and Related Demonstrations, CC*** Docket **No. *98-*184,**

(continued...)

and the concerns of the FCC with respect to the veracity of these out-of-region local entry "commitments" were well-founded. Early last year. both SBC and Verizon announced that they had each abandoned or drastically scaled-back their out-of-region local may plans.[42]

28. In the first five years following enactment of TA96, various mergers have been approved among large incumbent LECs that have reduced the number of Regional Bell Operating Companies (plus GTE) from eight to four. At the time that each of these mergers was first announced publicly, these large carriers had in each case promised that their combination would further the pro-competitive purposes of the AN. Based upon the competitive entry data set forth above. it is clear that, both in the District and on a national scale,[43] these mergers have done nothing but create larger, better financed fortress bottleneck monopolies. Indeed. the RBOCs' resistance to the market opening conditions of the *Act* has proven so successful that the competitive local exchange carrier industry now stands on the verge of collapse.[44]

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41. (...continued)
Memorondum Opinion and Order, Rel. June 16.2000, at paras. 43-48.

42. Rory J. O'Connor, "Looser Reins," *eWeek*, March 26,2001: "SBC Says It Meets Merger Terms Despite Out-Of-Region Cutbacks," *TR Daily,* March 20,2001.

43. The most recent data available from the FCC indicates that CLECs serve 10.2% of the nation's access lines. FCC, "Local Telephone Competition: *Status* as of December 31, 2002," July 2002 *("December 2001 Local Comp Report").* Table 6.

44. *See. e.g., In the matter of Joinr Application of Onepoint Communications Corp. and Verizon Communicarionsfor Authority Pursuanr to Section 214 of the Communications Act of 1934, os Amended. to Transfer control of Authorizations to Provide Domestic Interstate and International Telecommunicarions Services as a Non-Dominani Carrier,* CC Docket No. 00-170, AT&T's *Petition to Deny Joinr Applications.* October 23,2000.